



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: February 06, 2018.

Craig A. Gargotta

**CRAIG A. GARGOTTA
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE:	§	CASE NO. 15-52459-CAG
	§	
STAN P. BATES	§	
	§	
DEBTOR	§	CHAPTER 7 CASE

**AGREED ORDER
RESOLVING OBJECTION TO THE TRUSTEE FINAL REPORT
WITHOUT PREJUDICE TO THE RIGHTS OF 2040 BABCOCK, LTD
TO URGE ITS OBJECTION IN THE FWLL, LLC (15-52071-CAG) CASE
AS MAY BE DEEMED NECESSARY**

On the day this Order was signed, came on to be considered the Objection filed by creditor 2040 Babcock, Ltd to the Trustee Final Report filed by Jose C. Rodriguez, Chapter 7 Trustee.

The following parties appeared and announced to the court that they had reached agreement concerning the Objection: Jose C. Rodriguez, the Chapter 7 Trustee of the above numbered Chapter 7 filed by Stan Bates; David Gragg, Special Counsel for Randolph N. Osherow, Trustee of the FWLL, LLC case; and Ronald J. Smeberg, the attorney of record for objecting party, 2040 Babcock, Ltd.

The Court finds that on December 8, 2017, the Office of the United States Trustee filed the Trustee Final Report after completing its review (the “TFR”) (Dkt. #195). Jose C. Rodriguez filed the Notice of Trustee’s Final Report and Application for Compensation and Deadline to Object (NFR) (Dkt. #196) which provided notice of the filing to all parties with the regular twenty-one (21) day objection language.

The Court finds that 2040 Babcock, Ltd filed a timely Objection to the Trustee Final Report on December 28, 2017.

The Court finds that 2040 Babcock, Ltd. originally filed two claims in this case: Proof of Claim #1 in the amount of \$1,251,602.50 and Proof of Claim #7 in the amount of \$1,251,602.50 which was jointly filed with Richard Thum and jointly amended in the amount of \$3,799,267.77 on September 23, 2016. The Court further finds that 2040 Babcock, Ltd. filed a claim in the FWLL, LLC case (Proof of Claim #11 in the amount of \$1,251,602.50 and amended the claim in the amount of \$3,799,267.77 on September 23, 2016).

On October 4, 2017, an *Agreed Order Authorizing Chapter 7 Trustee To File The Trustee Final Report Without Prejudice To The Rights Of Richard Thum And 2040 Babcock, Ltd.* was entered (Dkt. #193). The Order authorized the trustee to file the Trustee Final Report incorporating a plan of distribution to case creditors in the manner and in the specific amounts set out in the *Notice To Creditors That Duplicate Proof Of Claims Filed In This Case Will Be Paid To And By The Chapter 7 Trustee Of FWLL, LLC* (Dkt. #176).

Randolph N. Osherow, as the Chapter 7 Trustee for FWLL, LLC, filed Proof of Claim #12 in this case in the amount of \$14,467,723.13. The Osherow claim incorporated seven claims, including the claim of 2040 Babcock, Ltd. in the amount of \$1,266,422.59. The TFR proposed to pay the Proof of Claim #12 filed by Mr. Osherow on behalf of the seven claimants in

the total amount of \$215,122.02 with the pro-rata distribution to be administered by Mr. Osherow in the FWLL, LLC case.

The Objection sought to preserve the right of 2040 Babcock, Ltd to receive a direct pro-rata distribution on its claim from the Bates bankruptcy estate rather than to be included as part of the claim filed by Mr. Osherow which would be paid on a pro rata basis in the FWLL, LLC case.

The Court further finds that no other objection to the Trustee Final Report has been filed.

The terms of agreement are as follows:

1. 2040 Babcock, Ltd. will withdraw its Objection to the Trustee Final Report to allow the Court to enter an Order approving the Trustee Final Report.
2. Jose C. Rodriguez is authorized to make full distribution pursuant to the terms of the Trustee Final Report.
3. The claim filed by Randolph N. Osherow will be paid a distribution in the amount of \$215,122.02 and will be administered as part of the FWLL, LLC case.
4. The filing of the Trustee Final Report is without prejudice to the rights of 2040 Babcock, Ltd., to re-urge its Objection in the FWLL, LLC case. Any re-urged objection filed by 2040 Babcock, Ltd. in the FWLL, LLC case shall be limited to a consideration of what pro rata amount should be paid on the 2040 Babcock, Ltd. claim from the amount of \$215,122.02 paid to Randolph N, Osherow, as trustee of the FWLL, LLC case.
5. Randolph N. Osherow, as the Chapter 7 trustee in the FWLL, LLC case, will hold the amount of \$215,122.02 in the FWLL, LLC estate account. No distribution will be made from this amount pending either the written consent of Richard

Thum, on behalf of 2040 Babcock, Ltd.; a court order authorizing distribution after notice and hearing; or upon final approval of the Trustee Final Report to be filed in the FWLL, LLC case.

The Court finds that the terms of agreement are reasonable and necessary. The agreement will permit the administration of this bankruptcy proceeding without further delay, will facilitate the administration of the FWLL, LLC case; and will preserve the rights of the objecting party to object, if any further objection should be necessary, to the Trustee Final Report to be filed in the FWLL, LLC case after appropriate notice and hearing. It is, therefore,

ORDERED that the terms of agreement are hereby approved. It is, further,

ORDERED that the Objection in response to the Chapter 7 Trustee's Final Report that was filed by creditor 2040 Babcock, Ltd., is hereby deemed to be moot, without prejudice to its rights to re-urge its objection in the FWLL, LLC case. It is, further,

ORDERED that the filing of the Trustee Final Report in this case is without prejudice to the rights of 2040 Babcock, Ltd., to re-urge its Objection in the FWLL, LLC case. Any re-urged objection filed by 2040 Babcock, Ltd. in the FWLL, LLC case shall be limited to a consideration of what pro rata amount should be paid on the 2040 Babcock, Ltd. claim from the amount of \$215,122.02 paid to Randolph N. Osherow, as trustee of the FWLL, LLC case.

ORDERED that Randolph N. Osherow, as the Chapter 7 trustee in the FWLL, LLC case, will hold the amount of \$215,122.02 in the FWLL, LLC estate account. No distribution will be made from this amount pending either the written consent of Richard Thum, on behalf of 2040 Babcock, Ltd.; a court order authorizing distribution after notice and hearing; or upon final approval of the Trustee Final Report to be filed in the FWLL, LLC case. It is, further,

ORDERED that the Chapter 7 Trustee in this case shall be authorized to make a final disbursement pursuant to the terms in the Trustee Final Report that was filed in this case.

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Agreed:

/s/ Jose C. Rodriguez
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CHAPTER 7 TRUSTEE

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**SPECIAL COUNSEL FOR
RANDOLPH N. OSHEROW, TRUSTEE
OF FWLL, LLC CASE**

/s/ **Ronald J. Smeberg**

w/ permission

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